



General Assembly

February Session, 2010

Raised Bill No. 5222

LCO No. 933

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Referred to Committee on General Law

Introduced by:
(GL)

***AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND
PROPANE CONTRACTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16a-21 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) [No person, firm or corporation shall sell at retail fuel oil or
4 propane gas to be used for residential heating without placing the unit
5 price, clearly indicated as such, the total number of units sold and the
6 amount of any delivery surcharge in a conspicuous place on the
7 delivery ticket given to the purchaser or an agent of the purchaser at
8 the time of delivery. No person, firm or corporation may bill or
9 otherwise attempt to collect from any purchaser of fuel oil or propane
10 gas an amount which exceeds the unit price multiplied by the total
11 number of units stated on the delivery ticket, plus the amount of any
12 delivery surcharge stated on the ticket.] For the purpose of this section,
13 [unit price] (1) "unit price" means the price per gallon computed to the
14 nearest tenth of a whole cent; (2) "associated equipment" means a gas
15 regulator, gas line, sacrificial anode, interconnecting hardware and
16 such other equipment necessary for the installation and operation of a

17 propane tank; and (3) "residential heating" means heat provided for a
18 structure with at least one but not more than four dwelling units.

19 (b) (1) No person, firm or corporation shall sell at retail fuel oil or
20 propane gas to be used for residential heating without a written
21 contract that contains all the terms and conditions for delivery of such
22 fuel oil or propane gas and the amount of fees, charges or penalties
23 allowed under this subsection assessed to the consumer under such
24 contract. No written contract shall contain any fees, charges or
25 penalties except for propane tank rental fees, propane tank removal
26 fees, liquidated damages and such other penalties for violation of the
27 contract terms. Such fees may increase during the contract term
28 provided the amount of such fees are clearly and conspicuously
29 disclosed. No contract for the delivery of fuel oil or propane gas under
30 this section shall include a provision for liquidated damages for a
31 consumer breach of such contract where the liquidated damages
32 exceed the actual damages to the fuel oil or propane gas retailer caused
33 by such breach. If a propane tank installed underground on property
34 owned by the consumer is being leased or lent to such consumer, such
35 contract shall provide the consumer with the option to purchase such
36 tank and associated equipment upon the expiration of the contract and
37 at such other times as provided in such contract for a commercially
38 reasonable amount and any reasonable waiver of liability or transfer of
39 warranty, which shall be stated in the contract. Any fuel oil or propane
40 gas retailer may enter into a separate contract with the purchaser for
41 additional services such as maintenance, repair and warranty of
42 equipment, provided such contract complies with the provisions of
43 this section. No written contract period shall be for a period greater
44 than thirty-six months.

45 (2) Any written contract required by this section shall be in plain
46 language pursuant to section 42-152, provided any fee, charge or
47 penalty disclosed in such contract shall be in twelve-point, boldface
48 type of uniform font.

49 (c) The requirement that contracts be in writing, as set forth in this
50 section, may be satisfied pursuant to the provisions of: (1) The
51 Connecticut Uniform Electronic Transactions Act, sections 1-266 to 1-
52 286, inclusive; (2) sections 42a-7-101 to 42a-7-106, inclusive; and (3) the
53 Electronic Signatures in Global and National Commerce Act, 15 USC
54 7001 et seq. Except as provided in subsection (d) of this section, verbal
55 telephonic communications shall not satisfy the writing requirement of
56 this section.

57 (d) The requirement that contracts be in writing pursuant to this
58 section and section 16a-23n, as amended by this act, may be satisfied
59 telephonically by a person, firm or corporation selling at retail fuel oil
60 or propane gas, only if such person, firm or corporation: (1) Has
61 provided to the consumer prior to any telephonic communication all
62 terms and conditions of the contract, in writing, except for the contract
63 duration, the unit price and the maximum number of units covered by
64 the contract; (2) employs an interactive voice response system or
65 similar technology which provides the consumer with the contract
66 duration, the unit price and the maximum number of units covered by
67 the contract to complete the contract; (3) retains, in a readily retrievable
68 format, a recording of the consumer agreeing to each such term and
69 condition for the period of the contract plus one year; (4) sends the
70 consumer a letter confirming the consumer's agreement to such terms
71 and conditions, with the written stipulation that the consumer is
72 bound by such terms and conditions unless the agreement is rescinded
73 by the consumer, in writing, not later than three business days after
74 receipt of such letter by said consumer; and (5) retains a copy of each
75 such letter for not less than the period of the contract plus one year.

76 (e) (1) No person, firm or corporation shall deliver fuel oil or
77 propane gas to be used for residential heating, without placing the unit
78 price, clearly indicated as such, the total number of units sold and the
79 amount of any delivery surcharge in a conspicuous place on the
80 delivery ticket given to the purchaser or an agent of the purchaser at
81 the time of delivery. Except where the delivery of fuel oil or propane

82 gas is placed in a common tank from which individual customers draw
83 such fuel oil or propane gas and are billed according to a meter that
84 measures such customer's usage from the common tank, no person,
85 firm or corporation may bill or otherwise attempt to collect from any
86 purchaser of fuel oil or propane gas an amount that exceeds the unit
87 price multiplied by the total number of units stated on the delivery
88 ticket, plus the amount of any delivery surcharge stated on the ticket.

89 (2) The requirement that contracts be in writing, as set forth in this
90 section, shall not apply to any retail fuel oil or propane gas contract
91 where no fee, charge or penalty is assessed, except for stating the unit
92 price of the retail fuel oil or propane gas delivered to a consumer and
93 any surcharge authorized under section 16a-22b, as amended by this
94 act.

95 (f) The provisions of this section shall not apply to existing
96 customers of a person, firm or corporation selling at retail fuel oil or
97 propane gas on October 1, 2010, who have valid written contracts on
98 said date. The provisions of this section shall apply as of the renewal
99 dates of such contracts.

100 (g) No person, firm or corporation shall condition the sale of fuel oil
101 or propane to a consumer upon an agreement to purchase a fuel oil or
102 propane tank from such person, firm or corporation. No person, firm
103 or corporation shall condition the sale of a fuel oil or propane tank to a
104 consumer upon an agreement to purchase fuel oil or propane from
105 such person, firm or corporation.

106 [(b)] (h) Any person, firm or corporation who violates [subsection
107 (a)] any provision of this section shall be fined not more than [one] five
108 hundred dollars for the first offense, [nor] not more than [five] seven
109 hundred fifty dollars for [each subsequent offense] a second offense
110 occurring not more than three years after a prior offense and not more
111 than one thousand five hundred dollars for a third or subsequent
112 offense occurring not more than three years after a prior offense.

113 Sec. 2. Section 16a-22b of the general statutes is repealed and the
114 following is substituted in lieu thereof (*Effective July 1, 2010*):

115 (a) No retail dealer of fuel oil or propane shall assess a surcharge on
116 the price of fuel oil or propane delivered to a customer if the delivery
117 of the fuel oil or propane is in an amount [in excess] of one hundred or
118 more gallons, except that a surcharge may be assessed if a delivery is
119 made outside the normal service area or the normal business hours of
120 the dealer or extraordinary labor costs are involved in making a
121 delivery. No other fee, charge or penalty may be assessed, except as
122 provided in section 16a-21, as amended by this act.

123 (b) No retail dealer of fuel oil or propane shall assess a residential
124 customer a minimum delivery surcharge on any delivery initiated by
125 the seller, including any delivery under an automatic delivery
126 agreement.

127 (c) Any person, firm or corporation who violates a provision of this
128 section shall be fined not more than five hundred dollars for a first
129 offense, not more than seven hundred fifty dollars for a second offense
130 occurring not more than three years after a prior offense and one
131 thousand five hundred dollars for a third or subsequent offense
132 occurring not more than three years after a prior violation.

133 Sec. 3. Subsection (b) of section 16a-23m of the 2010 supplement to
134 the general statutes is repealed and the following is substituted in lieu
135 thereof (*Effective October 1, 2010*):

136 (b) Each person, firm or corporation seeking registration as a home
137 heating oil or propane gas dealer shall apply annually for a certificate
138 of registration with the Department of Consumer Protection on forms
139 prescribed by the Commissioner of Consumer Protection. Such forms
140 shall require the dealer to disclose all affiliated companies registered
141 with the Department of Consumer Protection that are under common
142 ownership or have interlocking boards of directors. Each applicant
143 shall pay a registration fee of two hundred dollars. The commissioner

144 shall require all applicants for registration as a home heating oil or
145 propane gas dealer to provide evidence of general liability insurance
146 coverage and insurance to cover any potential environmental damage
147 due to fuel oil spills or propane gas leaks caused by such applicant as a
148 registered dealer which coverage shall be not less than one million
149 dollars. Each registered dealer shall provide the department with
150 evidence of each renewal of or change to such insurance coverage not
151 later than five days after such renewal or change during the period of
152 registration, which renewal or change shall meet the requirements of
153 this subsection.

154 Sec. 4. Section 16a-23n of the general statutes is repealed and the
155 following is substituted in lieu thereof (*Effective October 1, 2010*):

156 (a) As used in this section:

157 (1) "Capped price contract" means an agreement where the cost to
158 the consumer of heating oil or propane may not increase above a
159 specified price per gallon and the consumer may pay less than the
160 specified price under circumstances specified in such contract;

161 (2) "Fixed price contract" means an agreement where the cost to the
162 consumer of heating oil or propane is set at a specific price during the
163 term of the contract;

164 (3) "Futures contract" means a standardized, transferable, exchange-
165 traded agreement that requires delivery of heating oil or propane at a
166 specified price on a specified future date;

167 (4) "Guaranteed price contract" means a fixed price or capped price
168 contract or any other agreement where the per gallon price for heating
169 oil or propane is set at a specified amount unless certain circumstances
170 occur;

171 (5) "Physical supply contract" means an agreement for wet barrels of
172 oil or gallons of propane that has been secured by the heating oil or
173 propane dealer from a wholesaler; and

174 (6) "Surety bond" means a bond issued by a licensed insurance
 175 company on behalf of a dealer, guaranteeing that such company will
 176 reimburse any consumer losses incurred as a result of the failure of the
 177 dealer to fulfill an obligation to a consumer.

178 [(a)] (b) A contract or a renewal or extension of a contract for the
 179 retail sale of home heating oil or propane gas that offers a guaranteed
 180 price [plan] contract, including fixed or capped price contracts and any
 181 other similar terms, shall be in writing and the terms and conditions of
 182 such price plan shall be disclosed, including a plain language
 183 description of the circumstances under which the price may increase or
 184 decrease. A capped price contract shall specify how the price will or
 185 will not decrease in relation to the heating oil or propane commodities
 186 market. Such disclosure shall be in plain language and shall
 187 immediately follow the language concerning the price or service that
 188 could be affected and shall be printed in no less than twelve-point
 189 boldface type of uniform font.

190 [(b)] (c) A home heating oil or propane gas dealer that advertises a
 191 price shall offer such price for a period of no less than twenty-four
 192 hours or until the next advertised price is publicized, whichever occurs
 193 first.

194 [(c)] (d) No home heating oil or propane gas dealer shall enter into,
 195 renew or extend a [prepaid home heating oil or propane gas contract
 196 or a capped price per gallon home heating oil] guaranteed price
 197 contract unless such dealer has, not later than five business days after
 198 receipt of such guaranteed price contract, either: (1) Obtained and
 199 maintained heating oil or propane gas futures or forwards contracts,
 200 physical supply contracts or other similar commitments the total
 201 amount of which allow such dealer to purchase, at a fixed price,
 202 heating oil or propane gas in an amount not less than eighty per cent
 203 of the maximum number of gallons or amount that such dealer is
 204 committed to deliver pursuant to all [prepaid home heating oil or
 205 propane gas] guaranteed price contracts entered into, renewed or

206 extended by such dealer, [or that such dealer estimates is committed
 207 pursuant to all capped price per gallon home heating oil or capped
 208 price per unit propane gas contracts, respectively,] or (2) obtained and
 209 maintained a surety bond in an amount not less than fifty per cent of
 210 the total amount of funds paid to the dealer by consumers [pursuant to
 211 prepaid home heating oil or propane gas contracts] or that the dealer
 212 estimates will be paid to the dealer by consumers pursuant to all
 213 [capped price per gallon home heating oil or capped price per unit
 214 propane gas contracts, respectively] guaranteed price contracts. Such
 215 dealer shall maintain such total amount of futures or forwards
 216 contracts, physical supply contracts or other similar commitments, or
 217 the amount of the surety bond required by this subsection for the
 218 period of time for which such [prepaid home heating oil or propane
 219 gas contracts or capped price per gallon home heating oil or capped
 220 price per unit propane gas contracts] guaranteed price contracts are
 221 effective, except that the total amount of such futures or forwards
 222 contracts, physical supply contracts or other similar commitments, or
 223 the amount of the surety bond may be reduced during such period of
 224 time to reflect any amount of home heating oil or propane gas already
 225 delivered to and paid for by the consumer.

226 [(d)] (e) No [prepaid home heating oil or propane gas] guaranteed
 227 price contract shall require any consumer commitment to purchase
 228 home heating oil or propane gas pursuant to the terms of such contract
 229 for a period of more than eighteen months.

230 [(e)] (f) Any [prepaid home heating oil or propane gas] guaranteed
 231 price contract shall indicate: (1) The amount of funds paid by the
 232 consumer to the dealer under such contract, (2) the maximum number
 233 of gallons of home heating oil or maximum amount of propane gas
 234 committed by the dealer for delivery to the consumer pursuant to such
 235 contract, and (3) that performance of such [prepaid home heating oil or
 236 propane gas] guaranteed price contract is secured by one of the two
 237 options described in subsection [(c)] (d) of this section. Any such
 238 contract shall provide that the contract price of any undelivered home

239 heating oil or propane gas owed to the consumer under the contract,
240 on the end date of such contract, shall be reimbursed to the consumer
241 not later than thirty days after the end date of such contract unless the
242 parties to such contract agree otherwise.

243 ~~[(f)]~~ (g) Each home heating oil or propane gas dealer who enters
244 into, renews or extends [prepaid home heating oil or propane gas
245 contracts or capped price per gallon home heating oil contracts or
246 capped price per unit propane gas] guaranteed price contracts shall
247 inform the Commissioner of Consumer Protection, in writing, that
248 such dealer is entering into, renewing or extending such contracts and
249 shall identify any entity from which the dealer has secured futures or
250 forwards contracts or other similar commitments or surety bonds
251 pursuant to subsection [(c)] (d) of this section. Each such dealer shall
252 notify the commissioner if at any time the total amount of such secured
253 futures or forwards contracts, physical supply contracts or other such
254 similar commitments or surety bonds held by the dealer is less than
255 eighty per cent of the maximum number of gallons or amount that
256 such dealer is committed to deliver pursuant to all such [prepaid home
257 heating oil or propane gas] guaranteed price contracts entered into,
258 renewed or extended by such dealer or that such dealer estimates it is
259 committed to deliver pursuant to all of its [capped price per gallon
260 home heating oil or capped price per unit propane gas] guaranteed
261 price contracts, respectively. The commissioner shall prescribe the
262 form in which such information shall be reported.

263 ~~[(g)]~~ (h) Each person from which a home heating oil or propane gas
264 dealer has secured a futures [or forwards] contract, a physical supply
265 contract or other similar commitment pursuant to subsection [(c)] (d)
266 of this section or who provides a bond pursuant to this section shall
267 notify the Commissioner of Consumer Protection, in writing, of the
268 cancellation of such contract, [or] other similar commitment or of the
269 cancellation of such bond not later than three business days after such
270 cancellation.

271 (i) The provisions of any contract entered into pursuant to this
272 section shall not be enforceable against a survivor of a deceased
273 customer upon the death of the customer signing such contract unless
274 such survivor has accepted an express assignment of such contract in
275 writing.

276 Sec. 5. Section 16a-23r of the general statutes is repealed and the
277 following is substituted in lieu thereof (*Effective October 1, 2010*):

278 (a) A violation of the provisions of section 16a-23m, as amended by
279 this act, 16a-23n, as amended by this act, or 16a-23o constitutes an
280 unfair trade practice under subsection (a) of section 42-110b.

281 (b) In accordance with the provisions of section 53a-11, any [home
282 heating oil dealer] person, firm or corporation who knowingly violates
283 the provisions of subsection [(c)] (d) of section 16a-23n, as amended by
284 this act, shall have committed a class A misdemeanor.

285 (c) Any person, firm or corporation who violates the provisions of
286 section 16a-23m, as amended by this act, section 16a-23n, as amended
287 by this act, except the provisions of subsection (d) of said section 16a-
288 23n, or section 16a-23o, shall be fined not more than five hundred
289 dollars for a first offense, not more than seven hundred fifty dollars for
290 a second offense occurring not more than three years after a prior
291 offense and not more than one thousand five hundred dollars for a
292 third or subsequent offense occurring not more than three years after a
293 prior violation.

294 Sec. 6. Section 16a-23p of the general statutes is repealed and the
295 following is substituted in lieu thereof (*Effective October 1, 2010*):

296 (a) The Department of Consumer Protection may suspend or revoke
297 any registration issued under section 16a-23m, as amended by this act,
298 if the holder of such registration is grossly incompetent, engages in
299 malpractice or unethical conduct or knowingly makes false,
300 misleading or deceptive representations regarding such holder's work,

301 violates any provision of section 16a-23n, as amended by this act, fails
 302 to comply with any subpoena issued pursuant to subsection (b) of this
 303 section or violates any regulations adopted under section 16a-23q.
 304 Before any such registration is suspended or revoked, such holder
 305 shall be given notice and opportunity for hearing as provided in
 306 regulations adopted by the Commissioner of Consumer Protection in
 307 accordance with the provisions of chapter 54.

308 (b) The commissioner may, at his or her discretion, compel by
 309 subpoena the production of any documents from any dealer or from
 310 any provider of futures contracts, physical supply contracts or other
 311 similar commitments regarding compliance with the provisions of
 312 sections 16a-23m to 16a-23r, inclusive, as amended by this act.

313 Sec. 7. (NEW) (*Effective October 1, 2010*) Nothing in sections 16a-21,
 314 16a-22b, subsection (b) of section 16a-23m, and section 16a-23n or 16a-
 315 23r of the general statutes, as amended by this act, shall validate a
 316 provision or clause that would otherwise be unenforceable pursuant to
 317 section 42-150u of the general statutes.

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|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2010</i> | 16a-21 |
| Sec. 2 | <i>July 1, 2010</i> | 16a-22b |
| Sec. 3 | <i>October 1, 2010</i> | 16a-23m(b) |
| Sec. 4 | <i>October 1, 2010</i> | 16a-23n |
| Sec. 5 | <i>October 1, 2010</i> | 16a-23r |
| Sec. 6 | <i>October 1, 2010</i> | 16a-23p |
| Sec. 7 | <i>October 1, 2010</i> | New section |

Statement of Purpose:

To protect residential heating oil and propane consumers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]